

# **EXHIBIT D**

**AFFIDAVIT OF KITTY GRAHAM**

STATE OF ALABAMA       )  
MONTGOMERY COUNTY    )

Personally appeared before me, the undersigned Notary Public in and for the State of Alabama at Large, Kitty Graham, who is known to me and who, being duly sworn, deposes and says on oath as follows:

My name is Kitty Graham. I am over the age of nineteen (19) and this affidavit is based on my personal knowledge.

1. On January 18, 2005, while I was employed by Colonial Investment Services, Inc., I was unjustly terminated and replaced by a male who is much younger than I and who has much less seniority and experience in the banking business than I. At the time of my termination, I was fifty-seven (57) years old and held the position of Regional Platform Sales Director.

2. Prior to my termination, I had been working continuously in the banking industry for various financial institutions for approximately twenty-five (25) years. My years of banking experience include, but are not limited to, working in payroll, trust and customer service departments including working as an Assistant Vice President and Customer Sales Officer in charge of customer service and new accounts. Significantly, throughout my approximately twenty-five (25) years in the banking business through the date of my termination, I received good and/or excellent reviews.

3. Around 1990, I began working as a customer service representative for Elmore County National Bank and was subsequently promoted to the position of Assistant Vice President in charge of customer service and new accounts. Elmore County National Bank became Aliant Bank

during my tenure.

4. In 2000, I began working as a customer sales representative at Colonial Bank's Wetumpka branch located on highway 231. Two years later, after receiving good and/or excellent reviews regarding my job performance, I was promoted to the position of Assistant Vice President and Customer Sales Officer, a position I held from 2002 until June 2003. While I was Assistant Vice President and Customer Sales Officer at the Colonial Branch in Wetumpka, I was one of Colonial Bank's top producers in Alabama, Georgia, Texas, Nevada and Florida for selling fixed annuities. I received good and/or excellent reviews for my job performance in this position, as well as recognition from Colonial Bank and awards from insurance companies that I wrote business for in this position for a job well done.

5. As a result of the foregoing, Colonial Bank transferred and promoted me to work in the investment department of Colonial Investment Services, Inc., which is one of its subsidiaries, where I initially held the position of Regional Platform Training Officer. My job responsibilities included, but were not limited to, training existing and new Platform agents, i.e., employees licensed to sale life insurance and fixed annuities, how to better perform their job.

6. Around September 2003, I was promoted to the position of Regional Platform Sales Director. As the Regional Platform Sales Director I initially traveled the state of Alabama, part of Tennessee<sup>1</sup> and part of the state of Georgia. My job duties were subsequently expanded to include all of the state of Georgia. My job responsibilities as the Regional Platform Sales Director included coordinating and implementing sales programs with licensed bankers and team leaders. I also

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<sup>1</sup> I traveled to Colonial Bank branches located in three cities in Tennessee near the Alabama state line. These branches were considered part of Colonial's north Alabama region.

continued to be responsible for training, seminars, workshops and branch meetings in an effort to educate and increase sales knowledge and production in the area of platform sales.

7. As noted above, I was replaced on January 18, 2005 by Cary Guffey, a male who is much younger than I who has much less seniority and experience than I in the banking business. In particular, on January 18, 2005, the very same day I was terminated, Guffey was promoted to the position of Regional Sales and Development Wholesaling Officer for Alabama, Georgia, Texas and Nevada. Guffey's new responsibilities were the same as mine except he was responsible for a slightly larger territory, i.e., approximately twenty-five (25) new bank branches in Texas and Nevada combined, which I could have easily handled but was summarily denied the opportunity.

8. Without any forewarning, on January 18, 2005 I was told that my job had been eliminated due to a reorganization or restructuring and that this would be my last day.<sup>2</sup> I asked what other positions were available for me within the Colonial Bank Group which, in addition to Colonial Investment Services, includes several other subsidiaries. I was shocked and humiliated to be emphatically told that, even though I had been one of their top producers, there was "no place for [me], not even as a teller," which is an entry level position. At no time that day, did anyone indicate that my job performance had anything to do with Colonial's refusal to allow me continued employment. Moreover, I had received only positive feedback regarding the manner in which I performed my job as Regional Platform Sales Director.

9. Significantly, the only other employees whose jobs were allegedly eliminated during this so called "reorganization" or "restructuring" were three other females, all of whom were over

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<sup>2</sup> At the close of our meeting I was instructed to turn over my employee identification badge, which is needed for security purposes to access my work area. I was also told to make sure that I left the employee-issued lap top computer on my desk at the end of the day.

forty (40) years of age and whose job responsibilities were given to younger less experienced males.

10. Clearly, I have been the victim of age discrimination under the ADEA and but for Colonial's willful and/or reckless disregard for the same I would still have my job or a similarly situated position. In light of the foregoing, I also believe that I have been the victim of sex discrimination in violation of Title VII.

  
Kitty Graham

STATE OF ALABAMA       )  
MONTGOMERY COUNTY    )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Kitty Graham**, whose name is signed to the foregoing affidavit, and who is known to me, acknowledged before me on this day that she does swear the foregoing affidavit is true and correct, and that she executed the same voluntarily on this date.

SWORN TO AND SUBSCRIBED BEFORE ME this 4th day of April, 2005.

  
NOTARY PUBLIC

My Commission expires: 5/24/07

APR 11 2005